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Attorneys for Defendant BETSEY JOHNSON, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ELIZABETH McCOY, individually and on
behalf of herself and all others similarly
situated,

Plaintiff,

v.

BETSEY JOHNSON, INC., DOES 1
THROUGH 10,

Defendants.

CASE NO. C 07-4782 SC

**STIPULATION FOR STAY OF
PROCEEDINGS; ORDER**

WHEREAS Plaintiff Elizabeth McCoy filed this putative class action against Defendant Betsey Johnson, Inc. alleging violations of the federal Fair and Accurate Credit Transactions Act (FACTA) for failure to block the expiration date on receipts provided to customers for sales transactions involving credit or debit card purchases;

WHEREAS Plaintiff filed the putative class action even though Defendant had properly and timely truncated credit card and debit card numbers from customer sales receipts;

WHEREAS Defendant's counsel has advised Plaintiff's counsel of this Court's order in *Hile v. Frederick's of Hollywood Stores, Inc.*, N.D. Cal. Case No. C07-0715 SC, filed on October 17, 2007, denying class action certification in a putative class action alleging identical facts;

1 WHEREAS this Court's order in *Hile*, attached hereto as Exhibit A for reference,
2 denied class certification without prejudice pending a decision by the Ninth Circuit Court of
3 Appeals on the propriety of denying class action treatment on the facts of this case; and

4 WHEREAS the parties hereto believe it beneficial to stay these proceedings pending
5 the Ninth Circuit's decision of the class certification issues presented in this lawsuit;

6 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
7 above-entitled action, by their respective counsel, as follows:

8 (1) That the action be stayed for all purposes, including discovery and answering the
9 complaint, pending the Ninth Circuit's decision on the propriety of class action treatment in cases
10 such as this one.

11 (2) That the case management conference in this case presently scheduled for
12 Friday, February 22, 2008, at 10:00 a.m. be continued for approximately 180 days to Friday,
13 August 22, 2008, at 10:00 a.m.

14 (3) That this stay may be terminated by either side upon 30 days' written notice, and
15 said notice shall be filed with the Court.

16
17 DATED: January 22, 2008

JEFFER, MANGELS, BUTLER & MARMARO LLP

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20 By: /s/
MICHAEL J. HASSEN
Attorneys for Defendant BETSEY JOHNSON, INC.

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23 DATED: January 22, 2008

GORE LAW FIRM

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25 By: /s/
PIERCE GORE
Attorneys for Plaintiff ELIZABETH McCOY

ORDER

Based on the Stipulation of the parties, and good cause appearing:

IT IS HEREBY ORDERED that this matter is stayed pending the Ninth Circuit's decision on the propriety of class action treatment in putative class actions alleging as the sole FACTA violation the failure to block the expiration date of credit and/or debit card on customer sales receipts. Either side may dissolve this stay on 30 days' notice by filing with the Court a "Notice of Termination of Stay."

IT IS HEREBY FURTHER ORDERED that the case management conference set for February 22, 2008 is rescheduled for August 22, 2008.

DATED: _____

United States District Court Judge

JMBM
Jeffer Mangels
Butler & Marcano LLP

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ZACHARY HILE, on behalf of himself)	Case No. 07-0715 SC
and all others similarly situated,)	
Plaintiffs,)	ORDER DENYING
v.)	PLAINTIFF'S MOTION
FREDERICK'S OF HOLLYWOOD STORES,)	FOR CLASS
INC., FREDERICK'S OF HOLLYWOOD,)	CERTIFICATION
INC.,)	PURSUANT TO FEDERAL
Defendants.)	RULE OF CIVIL
	<u>PROCEDURE 23</u>

I. INTRODUCTION

Plaintiff Zachary Hile ("Plaintiff") filed a Motion for Class Certification Pursuant to Federal Rule of Civil Procedure 23 ("Motion"). Docket No. 13. Frederick's of Hollywood Stores, Inc., and Frederick's of Hollywood, Inc. ("Defendants"), opposed the motion and Plaintiff filed a Reply. See Docket Nos. 20, 27. For the following reasons, Plaintiff's Motion is DENIED without prejudice. Plaintiff may refile a Motion for Class Certification after an opinion is issued in another case now pending before the Ninth Circuit Court of Appeals that raises the same issues raised by the parties in the present action.¹

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¹ As discussed below, the case now pending before the Ninth Circuit is Soualian v. Int'l Coffee and Tea LLC, CV 07-0502, 2007 U.S. Dist. LEXIS 44208, at *1 (C.D. Cal. June 11, 2007), appeal docketed, No. 07-80100 (9th Cir. Sept. 13, 2007).

EXHIBIT A

1 **II. BACKGROUND**

2 On February 2, 2007, Plaintiff filed a class action against
3 Defendants under the Fair and Accurate Credit Transactions Act
4 ("FACTA"), 15 U.S.C. section 1681c(g).² See Compl., Docket No. 1.
5 Specifically, Plaintiff alleges that on January 24, 2007,
6 Plaintiff made a credit card purchase at one of Defendants' stores
7 and was provided a receipt that contained the expiration date of
8 Plaintiff's credit card.³ Mot. at 5.

9 Pursuant to Federal Rule of Civil Procedure 23 ("Rule 23"),
10 Plaintiff now seeks to certify the class of individuals "to whom
11 Defendant, after December 4, 2006, provided an electronically
12 printed receipt at the point of a sale or transaction on which
13 Defendant printed expiration dates in violation of 15 U.S.C. §
14 1681c(g)." Mot. at 5.

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16 **III. DISCUSSION**

17 Three District Courts in California have recently denied
18 motions for class certification in cases with factual allegations
19 practically indistinguishable from the case at bar. See Spikings
20 v. Cost Plus, Inc., CV 06-8125, 2007 U.S. Dist. LEXIS 44214, at *1
21 (C.D. Cal. May 25, 2007); Soualian, 2007 U.S. Dist. LEXIS 44208,
22

23 ² FACTA is a subset of the statutes contained within the Fair
24 Credit Reporting Act ("FCRA"), codified at 15 U.S.C. sections 1681,
25 et. seq.

26 ³ 15 U.S.C. § 1681c(g)(1) states that "no person that accepts
27 credit cards or debit cards for the transaction of business shall
28 print more than the last five digits of the card number or the
expiration date upon any receipt provided to the cardholder at the
point of the sale or transaction."

1 at *1; Najarian v. Charlotte Russe, CV 07-0501, 2007 U.S. Dist.
2 LEXIS 59879, at *1 (C.D. Cal. June 12, 2007). In all three cases,
3 the plaintiffs alleged that the defendants had violated FACTA by
4 including credit card numbers, expiration dates, or both on
5 printed receipts. See Spikings, 2007 U.S. Dist. LEXIS 44214, at
6 *1; Soualian, 2007 U.S. Dist. LEXIS 44208, at *1; Najarian, 2007
7 U.S. Dist. LEXIS 59879, at *1. In all three cases, class
8 certification was denied because the courts found that the
9 plaintiffs could not satisfy Federal Rule of Civil Procedure
10 23(b)(3).⁴ See Spikings, 2007 U.S. Dist. LEXIS 44214, at *17;
11 Soualian, 2007 U.S. Dist. LEXIS 44208, at *13; Najarian, 2007 U.S.
12 Dist. LEXIS 59879, at *6.

13 In Soualian, the district court's denial of class
14 certification was appealed and is now pending before the Ninth
15 Circuit Court of Appeals. See Soualian, 2007 U.S. Dist. LEXIS
16 44208, appeal docketed, No. 07-80100 (9th Cir. Sept. 13, 2007).
17 In the interests judicial efficiency and conservation of
18 resources, this Court DENIES, without prejudice, Plaintiff's
19 Motion for Class Certification. Once the Ninth Circuit issues an
20 opinion in the pending case of Soualian, Plaintiff may refile a
21 Motion for Class Certification.

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26 ⁴ Rule 23(b)(3) requires that common questions of law or fact
27 predominate over individual questions and that "a class action is
28 superior to other available methods for the fair and efficient
adjudication of the controversy." Fed. R. Civ. P. 23(b)(3).

1 IV. CONCLUSION

2 For the foregoing reasons, Plaintiff's Motion for Class
3 Certification is DENIED without prejudice. Plaintiff may refile
4 the Motion after the Ninth Circuit issues an opinion in Soualian,
5 2007 U.S. Dist. LEXIS 44208, appeal docketed, No. 07-80100 (9th
6 Cir. Sept. 13, 2007).

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9 IT IS SO ORDERED.

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11 Dated: October 17, 2007



12 UNITED STATES DISTRICT JUDGE
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